

Suresh Kumar Vs. Prem Chand

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Court : Punjab and Haryana

Decided On : May-31-1993

Reported in : AIR1994P& H203

Judge : Jawaharlal Gupta, J.

Acts : [Code of Civil Procedure \(CPC\), 1908](#) - Sections 151 - Order 15, Rule 5 and 5(2)

Appeal No. : Civil Revn. No. 419 of 1993

Appellant : Suresh Kumar

Respondent : Prem Chand

Advocate for Def. : O.P. Goyal, Sr. Adv. and; S.S. Salar, Adv.

Advocate for Pet/Ap. : C.B. Goel, Rajinder Goel and; R.C. Chauhan, Adv.

Judgement :

ORDER

1. The Petitioner is aggrieved by the order of learned trial Court by which it held that 'the tender was short and this being so, the Court has no option but to struck (strike) off the defence of the defendant.' A few facts may be noticed.

2. The plaintiff-respondent is the owner of the premises in dispute. He let out the premises to the petitioner vide rent note dated April 30, 1982 at the rent of

Rs.8500/-per six months. The tenant was also liable to pay the house tax and the water charges. The respondent claims that he terminated the tenancy of the petitioner by a registered notice dated February 22, 1990. In spite of that, the premises were not vacated. Accordingly, the respondent filed a suit on December 16, 1991 for a decree for the eviction of the petitioner from the premises and for recovery of the arrears of rent, mesne profits and damages along with interest etc. It is stated that the respondent claimed an amount of Rs. 53,000/-.

3. Notice of the suit was given to the petitioner who appeared in Court on February 6, 1992. He tendered an amount of Rs. 48,151.15. A sum of Rs. 38,250/- was tendered on account of arrears of rent for the period from Nov. 1, 1989 to January 31, 1992. An amount of Rs. 3729.34 was tendered by way of interest on the arrears of rent at the rate of 9 percent per annum. An amount of Rs. 5577.81 was tendered on account of house tax and a sum of Rs. 594/- on account of the water charges. The respondent accepted this amount under protest. It was claimed that the tender was short. Accordingly, a prayer for striking off the defence of the defendant-petitioner was made. The learned trial Court found that there was no dispute regarding the amount of Rs. 38,250/- paid on account of arrears of rent. However, it held that an amount of Rs. 4016.25 was due on account of interest on the arrears of rent while the petitioner had tendered only Rs. 3729.34. It further found that the petitioner had failed to pay interest on the amount of house tax and water charges. As a result, it came to the conclusion that the tender was short by Rs. 1159.71. No explanation having been given by the petitioner for failure to pay the actual amount which was due to the plaintiff-respondent, the learned trial Court struck off the defence of the petitioner.

4. Mr. C.B. Goel, learned counsel for the petitioner has contended that the learned trial Court has erred in imposing the extreme penalty of striking off the defence which was not justified in the circumstances of the present case, On the other hand Mr. O.P. Goyal, learned counsel for the respondent has contended that Order 15, Rule 5 contains a mandatory provision requiring the lessee to deposit the entire amount admitted by him to be due together with interest thereon and he having failed to do so, the order passed by the Court is absolutely legal and valid.

5. It is apt to notice the provision contained in Order 15, Rule 5. It reads as under :--

'5. Striking off defence for failure to deposit admitted rent: (1) In any suit by a lessor for the eviction of a lessee after the determination of his lease and for the recovery from him of rent or compensation for use and occupation, the defendant shall, at or before the first hearing of the suit deposit the entire amount admitted by him to be due together with interest thereon at the rate of nine percent per annum and whether or not he admits any amount to be due, he shall throughout the continuation of the suit regularly deposit the monthly amount due within a week from the date of its accrual, and in the event of the default in making the deposit of the entire amount admitted by him to be due or the monthly amount due as aforesaid, the Court may, subject to the provisions of sub-rule (2) strike off his defence.

Explanation 1 :-- The expression 'first hearing' means the date for filing written statement or for hearing mentioned in the summons or where more than one of such dates are mentioned, the last of the dates mentioned.

Explanation 2 :-- The expression 'entire amount admitted by him to be due' means the entire gross amount whether as rent or compensation for use and occupation, calculated at the admitted rate of rent for the admitted period of arrears after making no other deduction except the taxes, if any, paid to a local authority in respect of the building on lessor's account and the amount, if any, deposited in any Court.

Explanation 3 :-- Expression 'monthly amount due' means the amount due every month whether as rent or compensation for use and occupation at the admitted rate of rent, after making no other deduction except the taxes, if any, paid to a local authority, in respect of the building on lessor's account.

2. Before making an order for striking off defence, the Court may consider any representation made by the defendant in that behalf provided such representation is made within 10 days of the first hearing or, of the expiry of the week referred to in sub-section (1) as the case may be.

3. The amount deposited under this rule may at any time be withdrawn by the plaintiff:

Provided that such withdrawal shall not have the effect of prejudicing any claim by the plaintiff disputing the correctness of the amount deposited:

Provided further that if the amount deposited includes any sums claimed by the depositor to be deductible on any account, the Court may require the plaintiff to furnish the security for such sum before he is allowed to withdraw the same.'

6. On a perusal of the above provision, it appears that if a defendant fails to deposit 'the entire amount admitted by him to be due together with interest thereon at the rate of nine percent per annum.....' the Court 'may' strike off his defence. This provision is subject to the condition stipulated in sub-rule(2) which gives a right to the defendant to make a representation within the prescribed time. In other words, a right has been given to a defendant to show that in fact he has not committed any default or that there is a bona fide mistake. The Court has a discretion. It may on consideration of the representation or on the basis of any other material which may already be available on record find that there is no default or that there was good reason for it. In that event, it is not bound to strike off the defence. However, in a case, where it is apparent that a default has been committed by the defendant and no good reason is shown therefor either by making a representation or otherwise from the material on record, the Court has the jurisdiction to strike off the defence.

7. What is the position in the present case? A positive finding has been recorded by the Court that the amount tendered by the petitioner was short of the admitted amount. No representation whatsoever was submitted. Nothing has been pointed out from the record to indicate that there was a good reason for the failure of the petitioner to tender the full amount. In such a situation, there appears to be no error of jurisdiction which may entitle the petitioner to any relief in the exercise of revisional jurisdiction of this Court.

8. There is another aspect of the matter. The petitioner had appeared in Court on February 6, 1992. The impugned order was passed by the Court on January 5,

1993. During this long interval of 11 months, nothing was brought on record to either show that there was no default or that there was good reason for it. No effort appears to have been made by the petitioner in that direction. It is no doubt correct that sub-rule (2) requires that the representation has to be made within 10 days of the first hearing. The representation had to be made by February 16, 1992. None was made. Even otherwise, nothing was brought on record to show that there was a good cause for the default. Mr. C.B. Goel has not been able to refer to any material on record to show that the petitioner had a good cause on account of which the default had occurred. In such a situation, no fault can be found with the order of the learned trial Court.

9. Mr. C.B. God, learned counsel for the petitioner relies on the decision of this Court in *Sucha Singh v. State of Punjab*, 1990 (98) Pun LR 492 to contend that the wrong can be remedied under the inherent powers of the Court. In this case, the defendants were allowed to present the written statement in spite of the fact that on an earlier occasion their defence had been struck off. In the circumstances of the case, the learned Judge held that the Court had inherent powers to re-call an order of striking off defence for doing substantial justice between the parties. The action having been taken at the initial stage even before the framing of the issues, it was found that no injustice had been caused to the plaintiffs. It was held that the grant of costs in such cases is the appropriate compensation for the inconvenience caused.

10. Such is not the situation in the present case. A specific provision has been made by the Legislature to penalise a recalcitrant lessee. In a nut-shell, it has been provided that if a lessee fails to pay the admitted amount on the first date of hearing or by the prescribed date and also fails to show good cause therefor, his defence can be struck off. It embodies a penal provision along with a remedy. The specific provision has been made apparently with the object of avoiding harassment to a lessor. This object cannot be defeated by invoking the so-called inherent power under Section 151 of the Code of Civil Procedure. The special must override the general.

11. The petitioner failed to tender the amount which was admittedly due from him. He even failed to show good cause for the default. The penal consequence had to ensue. He has to thank himself for it.

12. Accordingly, it is held that there is no merit in this revision petition. It is dismissed in limine. In the circumstances of the case, there will be no order as to costs.

13. Revision dismissed.

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